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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/715,073	11/20/2000	James M. Cantonis	ACME SPONGE	8877

7590

10/22/2003

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EXAMINER
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COLE, LAURA C

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 10/22/2003

7

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/715,073

Applicant(s)

CANTONIS, JAMES M.

Examiner

Laura C Cole

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-58 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 17-58 is/are rejected.
- 7) ☒ Claim(s) 16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 November 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1, 4-9, 15, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Martin et al., USPN 5,671,498.

Martin et al. discloses a scrubbing device that is an elongated wringable pad comprising a cover and absorbent material (Figure 1), at least one rectangular piece forming the cover (Column 5 Lines 64-66), plural holes within the piece (Column 5 Lines 44-47), and the pad of a sufficient length to wring, the holes are spaced on one-half inch centers (Column 5 line 46 discloses a hole size of 1/16 of an inch and therefore every eighth hole is one half inch interval from another), the absorbent material may be a poly sponge (Column 5 Lines 52-53), the at least one rectangular piece is two rectangular sheets (Column 3 Lines 52- 54) which has two opposite end edges and side edges (a rectangle must have opposite end edges and side edges), and a pocket formed by joints that are stitches (Column 6 Lines 17-25). Martin et al. discloses does not disclose a physical dimension for the scrubbing device. Martin et al. dose however provide a teaching that the cover may extend for a length to enable a human user to cleanse the back (Figure 19 and Column 9 Lines 41-60.) With this use, the length of the cover is

Art Unit: 1744

*about 37 1/4"* and the width is *about 6 1/4"* or at least three times greater than the width of the pad.

2. Claims 39-56 are rejected under 35 U.S.C. 102(b) as being anticipated by Giallourakis, USPN 4,821,360.

Giallourakis discloses a polishing pad that comprises a cover that encloses an absorbent material (Figure 3 (2)), the cover further comprising first and second side portions (where the label (12) is located in Figure 2 is one side and there being an opposite side portion (where the label (8) is located in Figure 2), top and bottom portions (Figure 1), and first and second opposite end portions (shown in Figure 4, one end portion near the label (13)) having a complementary shape for fitting within the cover, and the cover having a plurality of openings (Figure 5). The openings are disposed on the top, bottom, sides, and ends of the cover (Column 3 Lines 35-40) as the fabric with the openings is used for the entire cover. The cover further comprises connections that are seams (Figure 2 (12), (14), (18)) that can be turned inside out as shown in Figure 3 to have inside seams for a smooth outer surface. The connections are on both or either side portion, the top and bottom portions, and one end portion (Figures 2 and 3). The other end portion "seam" comprises of an elastic member (Figure 4 (13)) that joins the end portion to the side portion, top portion, and bottom portion and forms a smooth outer surface.

In addition, the pad cover is formed of at least one rectangular piece (Column 2 Lines 38-41), plural holes in that piece (Figure 5), the pad being of a sufficient length to wring, the absorbent material is an elongated poly sponge (Column 2 Lines 12-13),

Art Unit: 1744

wherein the at least one rectangular piece is an at least one rectangular sheet (Column 3 Lines 10-13 and Lines 36-38), the at least one rectangular sheet having has two opposite end edges and side edges (a rectangle must have opposite end edges and side edges), a pocket formed by joints along the edges (Column 3 Lines 24-26), the joints being seams formed by stitches (Column 3 Lines 18-20), the pocket has the seams inward facing and smooth outer surfaces (Column 2 Lines 28-30 provide that it can be sown but turned inside out so that the smooth surface is the outer surface), at least one rectangular sheet has folds medially between the end edges about an axis forming a pocket having equal halves joined along the side edges (Figures 1A and 2A), plural pieces form the cover (Column 2 Lines 38-41), and the cover completely encloses the absorbent material and edges are jointed to prevent the absorbent from slipping out (Figure 4 and Column 3 Line 52 to Column 4 Line 4). Further, the plural pieces are at least four rectangular pieces (Column 3 Lines 35-40 disclose that each of two sheets may have a double layer of material, which is a total of four sheets), connections for the four sheets being stitched seams in alignment along the two longer parallel side edges and end edge comprising a pocket (Column 3 Lines 40-46; Figure 2), where the pocket has the seams inward facing and smooth outer surfaces (Column 2 Lines 28-30 provide that it can be sown but turned inside out so that the smooth surface is the outer surface), the absorbent material to be inserted is an elongated poly sponge (Column 2 Lines 12-13), and the sheets are formed by connections prior to the insertion of the absorbent material (Column 3 Lines 48-51). Even further, Giallourakis discloses that an at least one rectangular sheet that has opposite end-edges and side-

Art Unit: 1744

edges has a fold between the end edges about a medial axis forming a pocket having the adjacent edges joined to each other (Column 3 Lines 10-13, Lines 27-31; Figures 1 A and 2A).

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1-3, 5-9, 17-19, and 21 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Sewell, USPN 3,083,392.

Sewell discloses a combination sponge and chamois that is an elongated (Figures 1, 2, or 3) wringable pad that has a chamois cover (Figure 1 (3), Figure 2 (7), and Figure 3 (13)), at least one rectangular piece forming the cover (Figures 1-3), plural holes in the piece (Figure 1 (4); Figure 2 (11); Figure 3 (15)), the pad of a sufficient length to wring, an artificial sponge (which would include poly) (Figure 1 (2); Figure 2 (6); Figure 3 (12)), the at least one rectangular piece is an at least one rectangular sheet which has two opposite end edges and side edges (a rectangle must have opposite end edges and side edges), a pocket is formed by joints along the edges for receiving and holding the absorbent material, where the joints are formed by stitches (Column 2 Lines 22-23), and plural chamois (also man-made chamois-like) pieces may form the cover (Figures 2 and 3).

The length and width is not specifically disclosed, however it appears in Figure 1 that the length is approximately three times greater than the width. It would have been

Art Unit: 1744

obvious to one of ordinary skill in the art to modify the width or length of Sewell to provide the user with a sponge that can be gripped easily or to ergonomically clean narrow areas.

4. Claims 1, 5-11, 13, 14, 18, 22-23, 27-38, 57, and 58 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Giallourakis, USPN 4,821,360.

Giallourakis discloses all elements above however does not disclose the specific length and width although it appears in Figures 3 and 4 that the length is approximately three times greater than the width.

It would have been obvious to one of ordinary skill in the art to modify the width or length of Giallourakis to provide the user with a sponge that can be gripped easily or to ergonomically clean narrow areas.

5. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Giallourakis, USPN 4,821,360.

Giallourakis discloses all elements mentioned above, however does not disclose that the fold is made medially between the side-edges. At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to make a medial fold along the side-edges instead of the end-edges because Applicant has not disclosed that folding the material along particular edges provides an advantage is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art furthermore, would have expected Applicant's invention to perform equally as well with the fold medially along the side edges because it will still form a pocket with three sides

Art Unit: 1744

with stitched joints. Therefore it would have been obvious for one of ordinary skill in the art to modify '360 to obtain the invention as specified in claims 12 and 14.

6. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sewell, USPN 3,083,392.

Sewell discloses all elements mentioned above including the cover material being chamois, however does not disclose a sheep-skin chamois.

It would have been obvious to one of ordinary skill at the time of the invention was made to use sheep-skin chamois as a specific chamois cover material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious engineering choice. In re Leshin, 125 USPQ 416.

7. Claims 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Giallourakis, USPN 4,821,360 in view of Hale, USPN 5,918,341.

Giallourakis discloses all elements mentioned above, however does not disclose a specific length or width dimension.

Hale discloses a hand-sized controlled-fold cleaning sleeve that provides the teaching for a hand held wiping or cleaning device, the approximate size required would be 4 inches wide by 9 inches long (Column 3 Lines 27-32).

It would have been obvious to one of ordinary skill in the art to modify the size of the pad disclosed by Giallourakis and to use pieces of *about* 9 ½" in length and *about* 6 ¼" in width as Hale teaches to make the pad an appropriate and ergonomic size to be hand held.



Art Unit: 1744

8. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Giallourakis, USPN 4,821,360 in view of Sewell, USPN 3,083,392.

Giallourakis discloses all elements mentioned above, however does not disclose a using a chamois material. Giallourakis however does disclose that it is desirable to use a soft nonabrasive fabric (Column 1 Lines 13-14.)

Sewell discloses a chamois cover (Column 1 Lines 13-16.)

It would have been obvious to one of ordinary skill at the time of the invention was made to use chamois, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious engineering choice. In re Leshin, 125 USPQ 416.

#### ***Applicants Arguments***

9. In the response received on 09 September 2003, Paper No. 6, Applicant contends that:

A. Martin does not describe, teach or suggest an elongated wringable pad that has an absorbent material enclosed within a cover and the cover having holes for expressing contents of the absorbent material when wringing the pad.

B. Martin cannot provide the claimed device because Martin requires that the foam material must be removed from the woven filament cover for use on a surface.

C. Giallourakis does not describe or teach a wringable pad that has an absorbent material enclosed within a cover that has holes for expressing contents of the absorbent material when wringing the pad.

Art Unit: 1744

D. The Examiner has failed to show a teaching, suggestion, or inherence of plural holes in the cover that encloses the pad and helps express fluids when the pad and cover are wrung out after use (Giallourakis).

E. Nothing in Sewell describes, teaches, or suggests a pad with a cover enclosing an absorbent material with the cover having holes for expressing contents from the pad.

F. The Examiner picks and chooses different features from different embodiments in Sewell.

G. Totally absent from Giallourakis is the cover having a plurality of openings for wringing-out contents of the pad by twisting along the length of the pad.

H. Giallourakis does not disclose that the rectangular sheet that forms the encasing has a fold between the side edges so that the sheet is folded about an axis and joined at the edges to form an encasing.

I. Nothing in Sewell describes, teaches, or suggests a pad with a cover enclosing an absorbent material with the cover having holes for expressing contents from the pad, in which the cover is sheep-skin chamois.

J. There is no showing as to where in the references there is a teaching or suggestion to adapt Giallourakis removable sponge within the Hale foldable sleeve and arrive at the claimed invention.

K. There is no showing as to where there is a motivation or a suggestion within the references (Giallourakis or Sewell) to effect a combination as proposed by the Examiner.

***Response to Arguments***

10. Applicant's arguments, see Paper No. 6, filed 09 September 2003, with respect to 35 U.S.C. 112 have been fully considered and are persuasive. The rejection of claims 39-58 has been withdrawn.

11. Applicant's arguments under 35 U.S.C 102 and 35 U.S.C. 103 filed 09 September 2003 have been fully considered but they are not persuasive.

A. As mentioned above, Martin does describe an elongated wringable pad (Figure 1 (10)) that has an absorbent material enclosed (12) within a cover (14) and the cover having holes (Column 5 Lines 44-47; Column 10 Lines 21-27) for expressing contents of the absorbent material when wringing the pad.

B. Examiner does not understand Applicant's argument that Martin requires that the foam material must be removed from the woven filament abrasive cover for use on a surface. Is the applicant arguing that the *abrasive* covering is for a different use and has nothing to do with the claimed invention? In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., non-abrasive cover) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

C. As mentioned above, Giallourakis describes a wringable pad (Figure 3 (2)) that has an absorbent material enclosed (2) within a cover (8) that has holes (Figure 5, spacings) for expressing contents of the absorbent material when wringing the pad.

Art Unit: 1744

D. The Examiner has failed to show a teaching, suggestion, or inherence of plural holes in the cover that encloses the pad and helps express fluids when the pad and cover are wrung out after use (Giallourakis).

In response to applicant's argument that the cover helps express material when wringing the pad, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

E. As mentioned above, Sewell describes pad (Figures 1, 2, or 3) with a cover (3, 7, or 13) enclosing an absorbent material (2, 6, or 12) with the cover having holes (4, 11, or 15) for expressing contents from the pad.

F. Examiner demonstrates and points out all of the features of all three embodiments (Figure 1, 2, or 3) that meet the Applicant's claimed invention. Figure 3 is the embodiment that shows the cover enclosing the absorbent pad, however all the embodiments meet the claimed invention.

G. As disclosed above, Giallourakis discloses a pad with a cover enclosing an absorbent material having "holes" for expressing contents from the pad. It is not claimed that the cover must enclose the sponge, however Giallourakis does disclose this. Further, holes are defined as "A hollowed place in something solid; a cavity or pit"

Art Unit: 1744

(The American Heritage® Dictionary of the English Language, Fourth Edition, Copyright © 2000 by Houghton Mifflin Company). The loosely knit outer covering contain "holes."

In response to applicant's argument that the device of Giallourakis is not a wringable pad, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

H. As mentioned above, Giallourakis discloses the above elements. At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to make a medial fold along the side-edges instead of the end-edges because Applicant has not disclosed that folding the material along particular edges provides an advantage is used for a particular purpose, or solves a stated problem.

I. As mentioned above, Sewell describes pad (Figures 1, 2, or 3) with a cover (3, 7, or 13) enclosing an absorbent material (2, 6, or 12) with the cover having holes (4, 11, or 15) for expressing contents from the pad.

J. The sponge of Hale is described as hand held, see above and, and that the appropriate size would be 4 inches wide by 9 inches long (Column 3 Lines 27-32). However, Giallourakis does not disclose a specific length or width dimension. It would have been obvious to one of ordinary skill in the art to modify the size of the pad

Art Unit: 1744

disclosed by Giallourakis and to use pieces of *about* 9 ½" in length and *about* 6 ¼" in width as Hale teaches to make the pad an appropriate and ergonomic size to be hand held.

K. Giallourakis does not disclose a using a chamois material. Giallourakis however does disclose that it is desirable to use a soft nonabrasive fabric (Column 1 Lines 13-14.) Sewell discloses a chamois cover (Column 1 Lines 13-16.) It would have been obvious at the time of the invention was made to use chamois, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious engineering choice. In re Leshin, 125 USPQ 416.

#### ***Allowable Subject Matter***

12. Claim 16 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

Art Unit: 1744

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C Cole whose telephone number is (703) 305-7279. The examiner can normally be reached on Monday-Thursday, 7am - 4:30pm, alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Warden can be reached on (703) 308-2920. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

LCC  
LCC

06 October 2003

*Robert J. Warden, Sr.*  
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